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August 21, 2008

VIA E-MAIL

Chief Justice of the North Carolina Supreme Court
2 East Morgan Street
Raleigh, North Carolina 27601
E-mail: david.f.hoke@nccourts.org

North Carolina Business Court
200 South Elm Street - Suite 200
Greensboro, North Carolina 27401
E-mail: jholmes@ncbusinesscourt.net

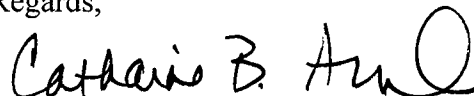
Re: *Velocity Fiber Broadband, LLC v. Lang Management, Inc.*; 08-CVS-011562

Dear The Honorable Chief Justice:

Attached please find Defendant Lang Management, Inc.'s Notice of Designation of Action as a Mandatory Complex Business Case Under N.C. Gen. Stat. § 7A-45.4.

Please let me know if you have any questions.

Regards,



Catharine Biggs Arrowood

cc: Michael W. Strickland, Esq.
P.O. Box 30787
Raleigh, North Carolina 27622
E-mail: mstrickland@stricklandlaw.com
Attorney for Plaintiff Velocity Fiber Broadband, LLC

CHARLESTON, SC
CHARLOTTE, NC
COLUMBIA, SC
MYRTLE BEACH, SC
SPARTANBURG, SC

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
08-CVS-011562

VELOCITY FIBER BROADBAND,)
LLC)
)
Plaintiff,)
)
v.)
)
LANG MANAGEMENT, INC.,)
)
Defendant.)
_____)

**NOTICE OF DESIGNATION OF ACTION
AS MANDATORY COMPLEX BUSINESS
CASE UNDER N.C. GEN. STAT. § 7A-45.4**

Pursuant to North Carolina General Statute § 7A-45.4, Defendant Lang Management, Inc. (“LMI”) hereby designates the above-captioned action as a mandatory complex business case. In good faith and based on information reasonably available, LMI, through counsel, hereby certifies that this action meets the following criteria for designation as a mandatory complex business case pursuant to N.C. Gen. Stat. § 7A-45.4 and should be adjudicated in the Business Court:

- _____ (1) The law governing corporations, partnerships, limited liability companies, and limited liability partnerships.
- _____ (2) Securities law.
- _____ (3) Antitrust law, except claims based solely on unfair competition under N.C. Gen. Stat. § 75-1.1.
- X (4) State trademark or unfair competition law, except claims based solely on unfair competition under N.C. Gen. Stat. § 75-1.1.
- _____ (5) Intellectual property law.
- X (6) The Internet, electronic commerce, and biotechnology.
- _____ (7) Tax law.

1. Defendant LMI is an independent contractor for a third-party, Capitol Infrastructure, LLC (“Capitol”). Capitol provides the technological infrastructure to enable

residential and commercial property developers to access and provide telecommunication services, including data services, multi-channel video services, voice services, internet services and additional communication services.

2. Pursuant to contracts between Capitol and Defendant LMI, LMI locates property developers in a designated geographic region and markets and sells telecommunications services to be provided over technological infrastructure constructed by Capitol, including but not limited to: (i) connectivity services with the internet using internet protocol wired Ethernet, wireless transmission or other transmission media (hereinafter "Data Services"); (ii) local voice telecommunications services provided by local exchange carriers or competitive local exchange carriers, as well as long distance voice telecommunications services provided by inter-exchange carriers or by resellers of the same (hereinafter, "Voice Services"); (iii) multi-channel cable television and other video and/or sound services that are provided over Capitol's infrastructure (hereinafter "Multi-channel Video Services"); and (iv) the installation and/or monitoring of burglar, fire and other security systems and related equipment, including but not limited to wired or wireless detection and transmission equipment (hereinafter "Security Services"). The services described in (i) through (iv) herein are collectively referred to as "Telecommunication Services."

3. Defendant LMI contracted with Plaintiff Velocity Fiber Broadband, LLC ("Velocity") to consult with LMI in connection with LMI's work for Capitol in a portion of LMI's designated geographic region, including certain areas of Virginia, North Carolina, South Carolina, Georgia and Florida.

4. The services which LMI and Velocity were responsible for selling are within the scope of "internet" and/or "electronic commerce," as that term is used in N.C. Gen. Stat. § 7A-45.4(a)(6).

5. Velocity was to be paid on a commission basis upon the completion of certain conditions precedent which included, among other things, the execution of a Master Communication Infrastructure Agreement between Capitol and the developer, the execution of property specific addenda, and the development of phasing and construction schedules for that property. This matter will require an understanding of the Telecommunications Services which are the subject matter of the agreements between Velocity and LMI , as well as LMI and Capitol.

6. In its complaint, Velocity contends that it “would have earned in excess of Two Million Dollars (\$2,000,000)” out of a supposed infrastructure agreement(s) between Capitol and Ginn Clubs & Resorts, Inc. pursuant to which it claims a technological infrastructure was allegedly installed by Capitol “in excess of 18,884 residences.” *See* Complaint, ¶¶ 12, 16. Velocity contends that it was responsible for selling the Telecommunication Services which are to be provided over Capitol’s technological infrastructure at these “18,884 residences” and, is thereby, allegedly entitled to compensation.

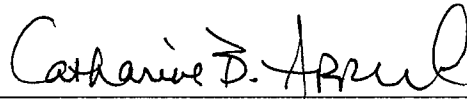
7. In addition, Defendant LMI will assert counterclaims against Velocity in this matter. After Velocity abruptly terminated its agreement with LMI, Velocity unlawfully failed to return confidential and proprietary information belonging to LMI and to Capitol, much of which constitutes protected trade secrets under North Carolina law. Velocity has misappropriated this confidential and proprietary information for the purpose of soliciting employees of Capitol and to unlawfully compete with LMI and Capitol. Accordingly, LMI will assert a counterclaim for, among other things, the misappropriation of trade secrets (N.C. Gen. Stat. § 66-152 *et al.*).

8. This counterclaim falls within the scope of “unfair competition law,” as that term is used in N.C. Gen. Stat. § 7A-45.4(a)(4).

9. LMI was served with Velocity's Complaint on July 23, 2008; accordingly, this Designation is timely.

10. A copy of all pleadings that have been filed to date (Plaintiff Velocity's Complaint) are attached hereto as Appendix A for the convenience of the Court.

This the 21st day of August, 2008.



CATHARINE B. ARROWOOD

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SCOTT E. BAYZLE

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Phone: (919) 828-0564

Fax: (919) 834-4564

Counsel for Defendant LMI

CERTIFICATE OF SERVICE

This is to certify that on this date I served a copy of the foregoing *Defendants' Notice of Designation of this Action as a Mandatory Complex Business Case Pursuant to N.C. Gen. Stat. § 7A-45.4* by e-mail to the following:

Chief Justice of the North Carolina Supreme Court
2 East Morgan Street
Raleigh, North Carolina 27601
E-mail: david.f.hoke@nccourts.org

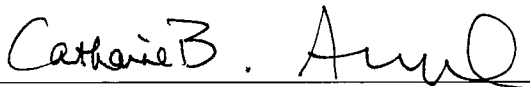
North Carolina Business Court
200 South Elm Street – Suite 200
Greensboro, North Carolina 27401
E-mail: jholmes@ncbusinesscourt.net

Michael W. Strickland, Esq.
Michael W. Strickland & Associates, P.A.
P.O. Box 30787
Raleigh, North Carolina 27622
E-mail: mstrickland@stricklandlaw.com
Attorney for Plaintiff Velocity Fiber Broadband, LLC

by hand-delivery to the following:

Clerk of the Superior Court of Wake County
11th Floor (Clerk's Office)
316 Fayetteville Street
Raleigh, North Carolina 27601

This the 21st day of August, 2008.


CATHARINE B. ARROWOOD
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cbarrowood@parkerpoe.com
Parker Poe Adams & Bernstein LLP
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APPENDIX

(Velocity's Complaint)

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.:

VELOCITY FIBER BROADBAND, LLC,)
)
)
Plaintiff,)
)
LANG MANAGEMENT, INC.,)
)
Defendant.)

COMPLAINT
(AOC-COMP)

BY _____
2009 JUL -1 PM 3:55
WAKE COUNTY, N.C. S.C.

NOW COMES Plaintiff, Velocity Fiber Broadband, LLC, by and through the undersigned counsel, complaining of Defendant, Lang Management, Inc., and alleges and says as follows:

GENERAL ALLEGATIONS

1. Plaintiff, Velocity Fiber Broadband, LLC ("Velocity"), is a North Carolina limited liability company with an office and principal place of business in Wake County, North Carolina.
2. Lang Management, Inc. ("LMI") is a North Carolina corporation with an office and principal place of business in Wake County, North Carolina.

JURISDICTION

3. This Court has subject matter jurisdiction of this claim pursuant to N.C. Gen. Stat. § 7A-240, 7A-242, and 7A-243. This Court has personal jurisdiction in this matter pursuant to N.C. Gen. Stat. § 1-75.4.
4. Venue is properly laid in this Court pursuant to N.C. Gen. Stat. § 1-82.

FACTS

5. Plaintiff is a business engaged in the sale, marketing and consulting related to cable television, telephone, data services, security services and related telecommunication services ("Telecommunication Marketing").

6. Commencing in or around 2003, Velocity began performing Telecommunication Marketing and sales for LMI.

7. On or about June 1, 2005 Velocity and LMI entered into a consulting agreement to govern the terms of Velocity's Telecommunication Marketing ("First Agreement"), a true and accurate copy is attached hereto as Exhibit "A".

8. On or about January 6, 2006 Velocity and LMI entered into a consulting agreement ("Second Agreement") which superceded the First Agreement, a true and accurate copy of the Second Agreement is attached hereto as Exhibit "B" and incorporated herein by reference.

9. The Second Agreement provided that Velocity would provide Telecommunication Marketing for LMI who was acting as an agent for Capitol Infrastructure, LLC ("Capitol") which would perform the telecommunication services for real estate developers.

10. Pursuant to the terms of the Second Agreement, Velocity was to be paid a commission of One Hundred Twenty Dollars (\$120.00) per residential unit (single family home, townhouse, condominium unit or apartment unit) in each phase of the project covered by an infrastructure agreement executed by Capitol introduced by Velocity

11. Section 8 of the Second Agreement provides that upon termination of the Second Agreement, "...any prior prospective Developer contacted by VELOCITY, as evidenced by Velocity's weekly status report, who executes an IA which CAPITOL within three (3) months

after termination of this Second Agreement shall be considered a contract concluded by VELOCITY and commissions will be due thereon in accordance with the then-current commission set forth in Section 7 and the then-current payment schedule set forth in Section 6.”

12. Commencing in or around March, 2006, Velocity, by and through its representative, began negotiating an infrastructure agreement with Ginn Clubs & Resorts, Inc. (“Ginn”) to provide telecommunication services for a number of projects being constructed by Ginn (“Ginn Agreement”).

13. In late April, when it became apparent that Velocity’s income from the Ginn Agreement would be very substantial, LMI informed Velocity that they were requiring that an addenda to the Second Agreement be executed reducing payment to Velocity and giving LMI additional termination rights.

14. Velocity was unwilling to accept the reduced commissions and in or about May, 2006 Velocity terminated the Agreement.

15. All major terms and conditions of the Ginn Agreement were agreed upon in or around July, 2006.

16. The Ginn Agreement was to provide telecommunication services for in excess of 18,884 residences.

17. In July, 2006, the Ginn Agreement was signed by Capitol and Ginn.

18. The Ginn Agreement envisioned that addenda would be executed periodically and provide details for each of the projects governed by the Ginn Agreement.

19. LMI has refused to compensate Velocity pursuant to the terms of the Agreement.

20. Upon information and belief, Velocity would have earned in excess of Two Million Dollars (\$2,000,000.00) from the Ginn Agreement.

FIRST CLAIM FOR RELIEF

21. The allegations contained in paragraphs 1 through 20 are realleged and incorporated herein by reference.

22. LMI's refusal to compensate Velocity for its commissions earned, pursuant to the terms of the Second Agreement is a material breach of the Second Agreement.

23. Velocity has duly performed all of its obligations to be performed pursuant to the terms of the Second Agreement.

24. As a direct and proximate result of LMI's breach of the Second Agreement, Velocity has suffered damages in an amount in excess of Ten Thousand Dollars (\$10,000.00) to be shown by proof at the trial of this matter.

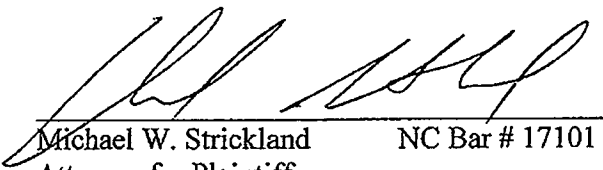
WHEREFORE, Velocity prays the Court for judgment as follows:

1. That Velocity have and recover of LMI, its actual damages in an amount in excess of Ten Thousand Dollars (\$10,000.00) to be shown by proof at the trial of this matter, together with interest thereon at the highest legal rate from and after the date of LMI's breach of contract;
2. That Velocity be granted a jury trial on all issues so triable;
3. That the cost of this action be taxed against LMI; and
4. That Velocity have and recover such other and further relief as the Court may deem just and proper.

This the 1st day of July, 2008

MICHAEL W. STRICKLAND & ASSOCIATES, P.A.

By:



Michael W. Strickland NC Bar # 17101

Attorney for Plaintiff
Post Office Box 30787
Raleigh, North Carolina 27622
Telephone: (919) 571-3898
Facsimile: (919) 571-1038

VERIFICATON

Brad McCain, President of Velocity Fiber Broadband, LLC, being first and duly sworn, deposes and says that he is the Plaintiff in the above titled action, and is familiar with the facts from which this claim arises, that he has read the foregoing **COMPLAINT** in full, and that to his personal knowledge, information and belief, the matters and things stated therein are true, except as to such matters as are stated upon information and belief, and as to them, he is informed and believes that they are true.

VELOCITY FIBER BROADBAND, LLC

By: Brad McCain
Brad McCain, President

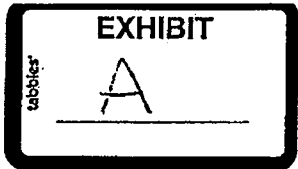
Sworn to and subscribed before me this the

25th day of June, 2008.

Deanna D. Smith
NOTARY PUBLIC

My commission expires 03/26/2012

DEANNA D. SMITH
NOTARY PUBLIC
Johnston County
North Carolina
My Commission Expires Mar. 26, 2012



CONSULTING AGREEMENT

THIS AGREEMENT is made this 6th day of January, 2006, by and between Lang Management Inc, a North Carolina corporation located at 107 Headlands Lane Cary NC, 27511 (herein referred to as "LMI") and Velocity Fiber Broadband, LLC, a North Carolina Limited Liability Corporation located at 13421 New Light Road Raleigh 27614 (herein referred to as "Velocity").

THE PARTIES RECITE THAT:

A. VELOCITY is engaged in the business of sales, marketing and consulting as an independent contractor.

B. LMI is also engaged in the business of sales, marketing and consulting as an independent contractor, including as an independent contractor for Capitol Infrastructure, LLC, a North Carolina limited liability company, hereinafter referred to as "CAPITOL", which company is a provider of infrastructure that enables single-family residences, townhouses, condominiums and apartment complexes to be served with multi-channel video services, voice services, data services and additional services. LMI is desirous of obtaining the services of VELOCITY as an independent contractor for the purposes of assisting LMI in the sales and marketing of CAPITOL's products and services.

C. VELOCITY is willing to accept the position as a marketing and sales representative of LMI on the following terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the services to be provided to LMI by VELOCITY, the payments to be made to VELOCITY by LMI, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Marketing Responsibilities. VELOCITY'S primary responsibility will be to market CAPITOL's products and services on a non-exclusive basis to developers, builders or owners (each a "Developer") in market areas defined by LMI. The initial market area shall be the States of North Carolina and South Carolina. VELOCITY may market and sell CAPITOL's products and services outside these market areas only with the prior written consent of LMI. VELOCITY shall pay its own expenses in performing its obligations under this Agreement. VELOCITY acknowledges that this Agreement does not confer on VELOCITY exclusive rights in any market area. VELOCITY represents and warrants to LMI that VELOCITY has the authority to enter into this Agreement and to perform fully its terms. VELOCITY agrees that it may not subcontract its obligations under this Agreement without the prior, written authorization of LMI.

2. Materials; Practices; Indemnification. VELOCITY will use marketing and sales material created or approved by LMI and/or CAPITOL and will promote CAPITOL products and services through customary sales and marketing approaches including, but

not limiting to meetings with prospective customers and advertising material provided and/or approved by LMI and/or CAPITOL. VELOCITY shall obey all laws with respect to sales and marketing of CAPITOL's products and services, shall not engage in any deceptive, misleading or unethical practices, shall otherwise conduct business in a manner that reflects favorably at all times on CAPITOL's products and services, and on the good name, goodwill and reputation of LMI and CAPITOL, and will not make any false or misleading representations with regard to the products and services or LMI or CAPITOL. VELOCITY shall indemnify and hold LMI and CAPITOL and their respective officers harmless from any demand, claim, loss, liability or damage, including reasonable attorney fees, whether in tort or contract, arising from any false or misleading representations made by VELOCITY in the marketing and sales of CAPITOL'S products and services, except as such representations appear in materials provided by or approved by LMI and/or CAPITOL.

3. Coordination. VELOCITY will be responsible for coordinating sales and marketing activities with LMI to ensure consistency of product sales and delivery. VELOCITY shall quote only those fees and other terms and conditions of sale as have been approved by LMI and/or CAPITOL. VELOCITY will provide LMI with a monthly status report, which should contain a summary of the sales meetings, marketing activities and future planned meetings anticipated by VELOCITY. VELOCITY agrees that for the term of this Agreement it shall not sell, market, distribute, support, or provide a product or service to any third party if such product or service has a primary purpose similar to that of the products or services provided by CAPITOL.

4. Marketed Services. VELOCITY will market and sell services as more particularly described as:

(a) "Multi-Channel Video Services" which are the multi-channel cable television and other video-and/or-sound services to be provided over infrastructure to be installed by CAPITOL or its subcontractors (e.g., the basic, premium, and pay-per-view services (whether analog or digital) that CAPITOL's designated Multi-Channel Video Service Provider offers generally to customers in a residential community and that are provided over CAPITOL's infrastructure).

(b) "Voice Services" which are the local voice telecommunications services provided by local exchange carriers (LECs) or competitive local exchange carriers (CLECs), as well as long distance voice telecommunications services provided by interexchange carriers (IXCs) or by resellers of the same.

(c) "Data Services" which are the connectivity services with the internet using internet protocol (IP) via wired Ethernet, wireless (802.11) transmission or other transmission media.

(d) "Additional Services" which are any additional services that CAPITOL's designated service providers may offer to customers in a residential community on a non-exclusive basis, and are any services other than the Multi-Channel

Video Services, Voice Services, or Data Services that can be provided to customers in the residential community over CAPITOL's infrastructure.

5. Infrastructure Agreement. In marketing CAPITOL's products and services to Developers, VELOCITY will utilize the Infrastructure Agreement (the "IA") provided by LMI and/or CAPITOL. VELOCITY will provide each Developer with a copy of the IA at the time such Developer indicates interest in the products and services of CAPITOL. VELOCITY is not authorized to negotiate or change any terms of the IA. The IA may be changed by CAPITOL at any time, and such revised IA shall be effective immediately upon Velocity's receipt of it. CAPITOL shall not be obligated to execute any IA with any Developer if CAPITOL believes, in its sole discretion; it is not in CAPITOL's best interest to do so. Upon the execution of the IA by CAPITOL and a Developer, LMI will notify VELOCITY that the IA has been signed and VELOCITY will obtain from that Developer, and submit to LMI for delivery to CAPITOL, the likely phasing and construction schedule for the project provided for in the signed IA (the "Phasing Schedule"), such phasing Schedule to be signed by the Developer. VELOCITY acknowledges, agrees and understands that CAPITOL solely retains the right to decide if the Phasing Schedule is reasonable and likely to occur. CAPITOL will sign off on a phasing schedule that it agrees to pay commissions against and return it to LMI, which in turn will return to VELOCITY for delivery to Developer.

6. Payment Schedule. On each IA signed by CAPITOL and a Developer resulting from sales efforts by VELOCITY, VELOCITY will earn a commission, in the amount set forth in Section 7 below, which commission shall be paid by LMI to VELOCITY on a "per phase" basis for each phase of the project that is the subject of the signed IA, and such commission shall be VELOCITY's sole compensation under this Agreement. (For example, if a project has three phases, VELOCITY will receive a commission for each of the three phases of the project.) For each phase of a project, VELOCITY's commission shall be paid in three payments, as follows:

6.1 Twenty Percent Payment.

(a) When the IA and the associated Phasing Schedule with the Developer specifies that construction on a project phase will commence within six (6) months from the date of the execution of the IA and such Phasing Schedule has been signed off on by CAPITOL, twenty percent (20%) of the commission due for that phase is to be paid to VELOCITY within thirty (30) days of (i) for the first phase of the project, the later to occur of the date that the phasing schedule has been approved by CAPITOL or the date LMI receives payment from CAPITOL for the Twenty Percent Payment for the first phase, and (ii) for each additional phase of the project, the later to occur of the date that CAPITOL receives notice that construction has begun on the first residential unit in that phase of the project or the date LMI receives payment from CAPITOL for the Twenty Percent Payment for the relevant phase of the project; or

(b) In the event the IA and the Phasing Schedule anticipates that the construction on a project phase will not commence within six (6) months from the date of

the execution of the IA or in the event that CAPITOL does not sign off on the Phasing Schedule presented by the Developer, for each phase of the project, twenty percent (20%) of the commission shall be due and paid within thirty (30) days after the later to occur of the date that CAPITOL begins installing the infrastructure for that phase or the date LMI receives payment from CAPITOL for the Twenty Percent Payment for the relevant phase of the project.

6.2 Thirty Percent Payment. Notwithstanding the twenty percent (20%) commission payment to be made under paragraph 6.1(a) or (b) above, thirty percent (30%) of the commission due VELOCITY for a phase of a project shall be due and paid by LMI to VELOCITY within thirty (30) days of the later to occur of the date that a service provider makes a service available to a customer in that phase of the project or the date that LMI receives payment from CAPITOL for the Thirty Percent Payment for the relevant phase of the project.

6.3 Fifty Percent Payment. The remaining commission payment in the amount of fifty percent (50%) of the commission due VELOCITY for a phase of a project shall be due and paid by LMI to VELOCITY within thirty (30) days of the later to occur of the date that service providers are providing a service to one half of all the customers scheduled for that phase of a project or the date that LMI receives payment from CAPITOL for the Fifty Percent Payment for the relevant phase of the project.

7. Commission. Unless otherwise stated in Exhibit A where this amount may vary on a property by property basis, VELOCITY will be paid a commission of One Hundred twenty and No/100 Dollars (\$120.00) per residential unit (single-family home, townhouse, condominium unit or apartment unit) in each phase of a project covered by an IA executed by CAPITOL and a Developer introduced to CAPITOL by VELOCITY. The commission shall be based on the residential units within the specific phase of the construction project as opposed to the number of services provided by CAPITOL's designated service providers, i.e., Voice, Multi-Channel Video, Data and Additional Services. For example, if the phase of a project consists of 360 apartment units, the commission will be based on \$120.00 times 360. LMI shall owe VELOCITY a commission on each phase of a construction project as of the date of the execution of the IA between CAPITOL and the Developer, and such commission shall be paid to VELOCITY in accordance with the schedule set forth in Section 6 of this Agreement. VELOCITY will be responsible for the payment of all taxes on its entire compensation under this Agreement, and LMI shall not withhold any taxes in connection with such compensation. For any executed IA, the commission due, and the payment schedule, will not be modified without mutual agreement between the parties; provided, however, that LMI may at any time, in its sole discretion, change the amount of the commission due under this Agreement or the payment schedule, for infrastructure agreements not yet executed between CAPITOL and a Developer at the time of the change. The parties agree that LMI's interpretation of the commission due VELOCITY under this Agreement and the payment schedule for such commission shall be final and binding on the parties.

8. Termination. This consulting agreement may be terminated at any time for any reason or for no reason by either party upon written notice to the other party. If terminated, any prior prospective Developer contacted by VELOCITY, as evidenced by Velocity's weekly status report, who executes an IA with CAPITOL within three (3) months after termination of this Agreement shall be considered a contract concluded by VELOCITY and commissions will be due thereon in accordance with the then-current commission set forth in Section 7 and the then-current payment schedule set forth in Section 6. Upon the request of LMI or no later than three (3) business days from the date of termination or expiration of this Agreement, VELOCITY shall return to LMI, or destroy, all materials provided to it during the term of this Agreement. Any provision of this Agreement which by its terms imposes continuing obligations on the parties shall survive the expiration or termination of this Agreement.
9. Applicable Law. The terms and conditions of this agreement shall be interpreted under the Laws of the State of North Carolina, without regard to its conflicts of laws provisions.
10. Limited Representation. VELOCITY and LMI each expressly acknowledge that they are business entities independent of one another. VELOCITY has no authority to represent LMI or CAPITOL as an agent or to bind LMI or CAPITOL by any contract, representation, understanding, or act concerning LMI or CAPITOL. Neither the making of this Agreement nor the performance of any part of it shall be deemed to establish a joint venture or partnership. VELOCITY shall serve as LMI's marketing and sales representative solely for the purposes of and strictly in accordance with this Agreement.
11. Reformation/Severability. If any provision of this Agreement shall for any reason be held to be invalid or unenforceable, such decision shall not affect, impair or invalidate the remainder of this Agreement, but shall be confined in its operation to the provision of this Agreement directly involved in the controversy in which the decision was rendered, the invalid or unenforceable provision shall be reformed so that each party shall have the obligation to perform reasonably and alternatively to give the other party the benefit of its bargain. In the event the invalid or unenforceable provision cannot be reformed, the other provisions or applications of this Agreement shall be given full effect, and the invalid or unenforceable provision shall be deemed struck.
12. Waiver. No waiver of any right or remedy with respect to any occurrence or event shall be valid unless it is in writing and executed by the waiving party, and further no such valid waiver shall be deemed a waiver of such right or remedy with respect to such occurrence or event on a continuing basis or in the future unless the waiver states that it is intended to apply continuously or to future events; it shall not excuse a subsequent breach of the same term.
13. Assignment. This Agreement may not be assigned by either party unless prior written consent is given by the non-assigning party, except that LMI may assign the Agreement without consent of VELOCITY upon the sale of all or substantially all of

LMI's assets or interests, or upon the consolidation or merger of LMI into another entity, such assignment being to the purchaser or succeeding entity.

14. Notices. Any notice made in relation to this Agreement shall be sent by reputable overnight courier or facsimile to the addresses set forth above, or such other address as the intended recipient has previously designated by written notice. The notice by courier service shall be prepaid, and shall be deemed to be given when the courier package is signed for at the delivery address. A facsimile shall be deemed to be received upon completion of transmission, as verified by a printout showing satisfactory transmission, except that should a facsimile be sent on a non-business day, receipt shall be deemed to occur on the next business day.

15. Confidential Information. VELOCITY acknowledges that LMI and/or CAPITOL has a proprietary interest in, as well as exclusive claim to the benefit of, the business of the Developers with whom VELOCITY will interact, including the business opportunities and goodwill pertaining thereto. Accordingly, VELOCITY shall provide LMI with the full benefit of all work and contacts relevant to the business of LMI and/or CAPITOL throughout the term of this Agreement. VELOCITY shall maintain in strict confidence, and shall not use or disclose except as required to perform its duties to LMI under this Agreement, all Confidential Information of LMI and/or CAPITOL (the "Confidential Information"). This obligation shall apply during the term of, and for one (1) year after the termination of, this Agreement, and shall apply regardless of whether the Confidential Information is in written or tangible form. For purposes of this Agreement, "Confidential Information" shall mean (a) any information or material proprietary to LMI and/or CAPITOL or designated as confidential either orally or in writing by LMI and/or CAPITOL; and (b) any information not generally known by non-LMI personnel or non-CAPITOL personnel (other than persons subject to confidentiality); and (c) any information which VELOCITY should know LMI and/or CAPITOL would not care to have revealed to others or used in competition with LMI and/or CAPITOL. Without limiting the generality of the foregoing, Confidential Information of LMI and/or CAPITOL shall include the terms of this Agreement, CAPITOL's products and services, the IA's, customer identities and contacts, Developer identities and contacts, operational methodologies, financial information, business practices and strategies, and like information of LMI's and/or CAPITOL's clients entrusted to VELOCITY by LMI. The failure of LMI and/or CAPITOL to mark any of the above-described information as proprietary, confidential or secret shall not affect its status as part of the Confidential Information protected by this Agreement. For purposes of the foregoing, Confidential Information does not, however, include information in the public domain at the time it is disclosed to VELOCITY, information that enters the public domain subsequent to the time of disclosure to VELOCITY without any fault or disclosure on the part of VELOCITY, information known to VELOCITY prior to the disclosure by LMI and/or CAPITOL (as demonstrated by VELOCITY's written records) free of any obligation of confidence, information developed by VELOCITY independently of and without reference to any Confidential Information, information communicated to VELOCITY by a third party free of any obligation of confidence, information communicated by LMI and/or CAPITOL to a third party free of any

obligation of confidence, or information for which VELOCITY is required to disclose by law, but then only to the extent of the court order requiring such disclosure, and only after notice to LMI and CAPITOL. This limitation in this paragraph will also apply to VELOCITY's employees and independent contractors.

16. Amendments. This Agreement may not be amended or modified except as set forth in Section 7 or by a written instrument signed by duly authorized officers or representatives of the parties. Any attempt to modify the Agreement by an oral understanding is void and shall have no effect. Notwithstanding the foregoing, VELOCITY acknowledges that CAPITOL may amend the fees, terms and conditions of any IA without the consent of VELOCITY.

17. Entire Agreement. This Agreement, together with any Exhibits attached hereto, constitutes the entire agreement between LMI and VELOCITY, regarding the subject matter hereof, and the parties shall not be bound by or liable for any statement, writing, representation, promise, inducement or understanding not set forth above.

Accepted and agreed as of the date first written above:

VELOCITY

BY: B. McCain
Name: Brian McCain
Title: Managing Partner

LANG MANAGEMENT, INC.

BY: Glen Olsen
Name: Glen Olsen
Title: Vice President

Exhibit A

Commission Amount to be paid to Velocity by LMI per Article 7 of the contract if the amount of commission is other than what is stated in Article 7.

Name of Development

Amount of Commission

Bright's Creek Polk County, NC \$60.00 per unit approximately 1200 Lots